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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150116050-5375-02]

RIN 0648-XD726

Atlantic Highly Migratory Species; North and South Atlantic 2015 Commercial Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule adjusts the 2015 fishing season quotas for North and South Atlantic swordfish based upon 2014 quota underharvests and international quota transfers consistent with International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13-02 and 13-03. This final rule applies to commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on June 4, 2015.

ADDRESSES: Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis

(FRFA) for North Atlantic swordfish; the 2007 EA, RIR, and FRFA for South Atlantic swordfish; and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and associated documents—are available from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Andrew Rubin by phone at 301-427-8503 or Steve Durkee by phone at 202-670-6637.

FOR FURTHER INFORMATION CONTACT: Andrew Rubin by phone at 301-427-8503, Steve Durkee by phone at 202-670-6637.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations.

For North Atlantic swordfish, this final action maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) and implements an ICCAT-recommended quota transfer of 18.8 mt dw from the United States to Mauritania. For South Atlantic swordfish, this action maintains the U.S. South Atlantic swordfish quota at 75.2 mt dw (100 mt whole weight (ww)), carries over 75.1 mt dw of 2014 underharvest, and authorizes the transfer of 50 mt ww (37.6 mt dw) to Namibia, 25 mt ww (18.8 mt dw) to Côte d'Ivoire, and 25 mt ww (18.8 mt dw) to Belize, consistent with ICCAT Recommendation 13-03. Information regarding the quota calculations can be found below. Additional details regarding the quotas and other actions in this rule and their impacts can be found in the proposed rule (80 FR 8838, February 19, 2015).

North Atlantic Swordfish Quota

At the 2013 ICCAT annual meeting, Recommendation 13-02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13-02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits allowable 2014 and any future underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (585.9 mt ww) of underharvest from 2014 to 2015. This final rule adjusts the U.S. baseline quota for the 2015 fishing year to account for the annual quota transfer to Mauritania and the 2014 underharvest.

The 2015 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The preliminary estimate of North Atlantic swordfish underharvest for 2014 is 2,395.6 mt dw (3,186.1 mt ww). Even without including an estimate of dead discards, the estimated underharvest is larger than the maximum carryover cap (440.6 mt dw or 585.9 mt ww). Therefore, as proposed, NMFS is carrying forward 440.6 mt dw, the maximum carryover allowed per Recommendation 13-02. Additionally, this final rule reduces the 2,937.6 mt dw baseline quota by the 18.8 mt dw (25 mt ww) annual quota transfer to Mauritania. These two changes result in an adjusted North Atlantic swordfish quota for the 2015 fishing year of 3,359.4 mt dw (2,937.6 baseline quota + 440.6 underharvest - 18.8 transfer to Mauritania = 3,359.4 mt dw or 4467.47 mt ww). From that adjusted quota, 50 mt dw is allocated to the reserve category for in season adjustments and research, and 300 mt dw is allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, per §

635.27(c)(1)(i). This results in an allocation of 3,009.4 mt dw (3,359.4 adjusted quota - 50 to the reserve quota – 300 mt dw to the incidental quota = 3,009.4 mt dw) for the directed category, which is split equally between two seasons in 2015 (January through June, and July through December) (Table 1).

South Atlantic Swordfish Quota

In 2013, ICCAT Recommendation 13-03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13-03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13-03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d’Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2014, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2014. The adjusted 2014 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings the previous year. Therefore, 75.1 mt dw of underharvest is available to carry over to 2015. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2015 fishing year.

Table 1. 2015 North and South Atlantic Swordfish Quotas

North Atlantic Swordfish Quota (mt dw)	2014	2015
Baseline Quota	2,937.6	2,937.6

International Quota Transfer		(-)18.8 (to Mauritania)	(-)18.8 (to Mauritania)
Total Underharvest from Previous Year ⁺		1,337.4	2,395.6
Underharvest Carryover from Previous Year ⁺		(+)734.4	(+)440.6
Adjusted Quota		3,653.2	3,359.4
Quota Allocation	Directed Category	3,303.2	3,009.4
	Incidental Category	300	300
	Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw)		2014	2015
Baseline Quota		75.2	75.2
International Quota Transfers*		(-)75.2	(-)75.2
Total Underharvest from Previous Year ⁺		75.1	75.1
Underharvest Carryover from Previous Year ⁺		75.1	75.1
Adjusted quota		75.1	75.1

+ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 underharvest is based on data received from commercial dealers and anglers; it does not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

* Under Recommendation 13-03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Response to Comments

During the proposed rule comment period, NMFS received four written comments, three of which were directly related to the proposed rule. NMFS also heard comments during a discussion on the rule held at the HMS Advisory Panel meeting on March 10, 2015. A summary of the relevant comments on the proposed rule are shown below with NMFS' response. One written comment requested the general protection of fish, which is not specifically relevant to this rulemaking. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for NOAA-NMFS-2015-0023.

Comment 1: Close the swordfish fishery because of overfishing.

Response: According to the latest ICCAT Standing Committee on Research and Statistics (SCRS) stock assessment (2013), the stock is not overfished and no overfishing is taking place. Since the baseline adjusted quotas established through ICCAT are within the TAC established by

the stock assessment, this action is unlikely to lead to overfishing. Therefore, NMFS does not make the change requested by the commenter.

Comment 2: NMFS received contrasting comments regarding the underharvest carryover. One commenter said that no underharvest should be carried over into the 2015 quota. Other commenters stated that underharvest carryovers should not be limited to 15 percent of the baseline quota, and further specified that the underharvest carryover does not provide enough flexibility to account for unforeseen environmental and economic fluctuations and only affects the United States since most other countries fully utilize their allocation. That commenter felt the restriction of the carryover of underharvested quota is inconsistent with the Magnuson-Stevens Act and Atlantic Tuna Convention Act (ATCA) by not allowing for optimum yield or providing a reasonable opportunity to harvest U.S. quota.

Response: Carrying over underharvest into the following year's quota provides flexibility to adjust to environmental and economic fluctuations. These fluctuations may result in fishermen not catching their full quota in a given year, but the carryover provides the opportunity to benefit from part of that underharvest in the subsequent year.

Currently, the United States does not utilize the entire base quota from ICCAT, thus, the underharvest carryover limit is unlikely to affect domestic access to the resource in the short term. Because the current carryover limit is unlikely to affect domestic access to the resource, NMFS is not changing the current limit as requested by the commenter.

Regarding the concerns that the underharvest carryover limit affects U.S. fishermen's opportunity to harvest the U.S. quota at optimum yield, ICCAT adopted the limited underharvest carryover provision to help ensure that MSY is not exceeded. The Magnuson-Stevens Act requires preventing overfishing while achieving on a continuing basis optimum yield. Optimum

yield itself is prescribed based on MSY as reduced by ecological and other factors. The carryover limit is consistent with the MSA and with ATCA, which provides that quotas adopted at ICCAT cannot be increased or decreased. Furthermore, we note that for the past decade, the domestic fishery has neither utilized the entire U.S. quota allocation nor has it harvested it at a level to be impacted by an underharvest carryover limit.

Comment 3: While NMFS should implement the current ICCAT swordfish quota recommendations, the next time the swordfish recommendations are negotiated at ICCAT, the United States should change its position. No U.S. quota should be transferred to other countries unless the United States receives something in return since these transfers help develop new fisheries that are not as conservation-minded as U.S. fisheries. Furthermore, landings under the international quota transfers should be credited as U.S. landings.

Response: NMFS agrees that it should implement the quota measures in Recommendations 13-02 and 13-03 to comply with ICCAT measures. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations, and the regulations as finalized appropriately carry out ICCAT recommendations regarding the North Atlantic swordfish stock while meeting NMFS's legal obligations and management needs.

In the future, when negotiating swordfish recommendations at ICCAT, the United States will consider the state of the domestic fishery at that time to balance the needs of both U.S. fishermen and the environment.

Comment 4: The U.S. fisheries are not harvesting part of its swordfish quota due to domestic regulations such as the time/area closures for pelagic longline gear. NMFS should

reopen these areas to fishermen who are using circle hooks and following best practices. NMFS should reinstate the 33 pound minimum size for Atlantic swordfish.

Response: This rule addresses quota specifications only; time/area closures and other management measure are beyond the scope of this action.

Changes from the Proposed Rule

The final rule contains no changes from the proposed rule, except for minor landings updates based on more recent 2014 landings reports.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and other applicable law.

This final action is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not

repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: April 29, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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